IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 561 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RAMESHLAL SOMABHAI PARIKH

Versus

MESSERS, STAR TRANSPORT CO.

Appearance:
MR SI NANAVATI With Mr. Saurin Mehta for Appellants No. 2, 3 & 4 (Appellant No.1 Rameshbhai Somabhai Parikh - since deceased)
MR DD VYAS for Respondent No. 2
MR ARUN H MEHTA for Respondent No. 3
Respondent no.1 M/s. Star Transport Co. (Deleted)

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE S.D.DAVE

Date of decision: 13/09/96

ORAL JUDGEMENT

Per: S.D.Dave, J:-

The present First Appeal arises out of the award

made by the learned MAC Tribunal, Kheda at Nadiad, in MAC Case No. 321 of 1978 dated January 28, 1980.

The appellants who are the original claimants had approached the Tribunal with a case that, they would be entitled to the total compensation in sum of Rs.2,50,000-00 for the accidental death of deceased Ashokkumar Parikh. According to the claimants, the deceased was driving the Ambassador Car bearing No. G J H 1309 and was proceeding towards Baroda on 14th March 1978. According to them, the deceased was on the correct side of the road, but the motor truck being driven by the opponent no.2 had come there from the opposite direction with the excessive speed, as a result of which, there was a collision between the two vehicles. According to the claimants, Ashokkumar Parikh had received grave injuries and he had died. It was their case further that, the deceased Ashokkumar was aged about 42 years at the relevant time and used to earn Rs.20,000-00 to Rs.22,000-00 per year. It is on this basis that the claimants had advanced the claim in sum of Rs.2,50,000-00.

The original opponent No. 1 & 2, namely the driver and owner of the vehicle had not appeared before the Tribunal, though duly served. Any how, the case of the claimants came to be challenged by the original opponent no.3 the Insurer. It was contended that the accident was the result of rash & negligent action on the part of the deceased himself. It was also said that, in any case the original claimants would not be entitled to the above said compensation.

While deciding the relevant issues, the Tribunal has come to the conclusion that the motor truck was "almost entirely on the correct side of the road" and the car had went "almost entirely on the incorrect side of the road". The Tribunal has reached this conclusion upon the appreciation of the Panchanama of the Scene of Occurrence. The Tribunal has noticed that the driver of the car had not applied the brakes at all. The panchanama also shows that the truck driver had in fact applied the brakes. It is indeed true that, after the collision the car was pushed back for a distance of about 28 ft. But merely because from this, according to the Tribunal, it could not have been successfully urged that the truck driver alone was guilty.

The said conclusion of the Tribunal is being assailed by learned counsel Mr. Nanavati, by urging

that, the same does not appear to be a correct legal and factual position. We are not in a position to accept this contention coming from learned counsel, for the simple reason that, the panchanama of the scene of occurrence goes to show very clearly that, the car had entered almost entirely on the incorrect side of the road. The truck was admittedly on the correct side of the road. It appears that, the car driver, deceased Ashokkumar Parikh had entered into the incorrect side of the road and there was a head on collision resulting into his death. The brake marks would go to show that the truck driver had tried to save the situation and had applied the brakes. Any how, this was not done by the deceased. It therefore is clear that the Tribunal was perfectly justified in coming to the conclusion that it was a case of contributory negligence on the part of the deceased. In our view, the Tribunal also appears to be perfectly justified in coming to the conclusion that the deceased was guilty to the extent of 75 % and the blame on the shoulders of the truck driver would be of 25 % only. Thus, the first contention coming from the learned counsel for the appellants deserves rejection.

The second contention being raised by learned counsel for the appellants is that, the income of the deceased has not been assessed in a correct manner by the Tribunal. We should say that, this contention also does not appear to be acceptable. The Tribunal has taken into consideration the entire relevant evidence regarding the claim of the deceased. The Tribunal was justified in not recognising the case of the claimants regarding some income which the deceased would have started to earn, provided, his business at Baroda had gained some momentum. It appears that, therefore, the Tribunal was perfectly justified in accepting an amount of Rs.14,000-00 per annum as the loss to the claimants. The Tribunal was further justified in coming to the conclusion that,in the facts & circumstances of the case and regard being had to the age of the deceased and that of the claimants, 15 would be the proper multiplier. Thus, in our opinion it cannot be said that the learned Tribunal was not in order in making the assessment regarding the income of the deceased and dependency loss. The second contention also therefore fails.

The net effect is that, the present appeal fails and the same requires to be dismissed. We order accordingly. There shall be no order as to costs.
